

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

THERESA BALDERAS,	§	
LEONARDO “LEO” BALDERAS, Jr.,	§	
And JOSHUA BALDERAS	§	
Plaintiffs	§	
	§	
VS.	§	
	§	CIVIL ACTION NO. 5:16-CV-239-OLG
SOUTHSIDE INDEPENDENT SCHOOL	§	
DISTRICT, JULIAN DE LA ROSA	§	
GONZALES, JOHNNY CANTU, JR,	§	
MANUEL SANDOVAL, JR,	§	
AND KENNETH BOULDIN, JR.,	§	
INDIVIDUALLY AND IN THEIR OFFICIAL	§	
CAPACITY AS MEMBERS OF THE BOARD	§	
OF TRUSTEES	§	
Defendants.	§	JURY REQUESTED

JOINT STIPULATED FACTS

TO THE HONORABLE COURT:

NOW COME ALL PARTIES and file this their Joint Stipulated Facts pursuant to the Court’s Order of January 15, 2019, Dkt. No. 106. The parties stipulate as follows:

1. Plaintiff Leonardo Balderas was hired for the position of Security/courier for the administration office in 2013. Dkt. 56 Ex. A-1, 18:8-18:19. Plaintiff Theresa Balderas was hired as the Secondary Curriculum Coordinator for the Southside Independent School District in June of 2014. Dkt. 55 Ex. A-1, 30:9-32:25. Plaintiff Joshua Balderas was hired as a campus police officer for the Southside Independent School District Police Department in August of 2014. Dkt. 54 Ex. A-1, 18:2-18:6.

2. On March 4, 2015, based on reports made by an employee at Matthey Middle School, Sergeant Isaac Martinez gave Joshua Balderas a verbal reminder of the District's sexual harassment policies and procedures, and cautioned him on the consequences of violating those policies and procedures. Dkt. 54 Ex. B-2; Ex. B-3. On March 16, 2015, Chief of Police David E. Zaragoza spoke with Joshua Balderas about the situation with Ms. Martinez, the employee at Matthey Middle School. Dkt. 54 Ex. B-4; *see also* Dkt. 54 Ex. B-3. During that conversation, Chief Zaragoza explained to Joshua Balderas that if Ms. Martinez decided to file a complaint against him, an investigation would be conducted into the allegation, and if the allegation had merit, he could be terminated. Dkt. 54 Ex. B-4. Chief, "also explained to [Joshua Balderas] that being terminated for sexual harassment would have a negative impact on his law enforcement career." Dkt. 54 Ex. B-3. Joshua Balderas stated, "that he understood the consequences of his behavior and that he would correct his behavior. He stated that he would stay away from Ms. Martinez and that [Chief] would not hear anything negative about him from here on." Dkt. 54 Ex. B-3.

3. On April 16, 2015, Chief Zaragoza provided Joshua Balderas with written documentation of reported complaints, "by employees of the Southside ISD that related to negative and unprofessional behavior on [Joshua's]part." Dkt. 54 Ex. B-5. As part of that documentation, Chief Zaragoza provided Joshua Balderas with specific directives regarding what was expected of Joshua Balderas during his employment as a Police Officer at Southside ISD. Ex. B-5. Specifically, Joshua Balderas was directed, "to report to Gallardo Elementary every day by 6:30am and to remain on campus until 4:00pm." Dkt. 54 Ex. B-5. Joshua Balderas was also directed, "not to frequent or be seen at any campuses other than Gallardo Elementary. The stipulation that you not be observed or

present at the high school or any location in the district other than Gallardo is a twenty four hour, seven days a week stipulation. Any failure to follow these stipulations could result in further negative action on your employment contract with Southside ISD.” Dkt. 54 Ex. B-5.

4. The Southside Independent School District held a school board election on May 9, 2015, that resulted in the election of individual defendants Julian de la Rosa Gonzales, Johnny Cantu, Jr., Manuel Sandoval, Jr., and Kenneth Bouldin, Jr., as well as Mr. Daniel R. Espinoza. *See* Dkt. 54 Ex. B-1. Mr. Gonzales, Mr. Cantu, Mr. Sandoval, Mr. Bouldin, and Mr. Espinoza were sworn in as newly elected Board Members at the May 20, 2015 Board Meeting. *See* Dkt. 54 Ex. B-1.

5. On July 9, 2015, both Theresa Balderas and Leonardo Balderas were reassigned by Interim Superintendent Dr. Joe Gonzales as part of a reorganization impacting multiple employees. Dkt. 55 Ex. B-2 (“Please be advised that I am in the process of reorganizing the District for the upcoming 2015-16 school year...As part of the reorganization, I will be altering the organizational structure within the District.”); and Dkt. 56 Ex. B-2 (“Please be advised that I am in the process of reorganizing the District for the upcoming 2015-16 school year...The purpose of the reorganization is to increase the effectiveness of the organization as we move forward into the new academic year. As part of the reorganization, I will be altering the organizational structure within the District.”). Theresa Balderas was reassigned from the position of Secondary Curriculum Coordinator to the position of Specialist DAEP Program. Dkt. 55 Ex. B-2. In the letter notifying her of her reassignment, Theresa Balderas was notified that her salary for the 2015-16 school year would, “remain the same as it was during the 2014-15 school year,” but that the following school year she would, “be paid in accordance with [her] new position assignment.” Dkt. 55 Ex. B-2. Absent any pay raises approved by the Board of Trustees, Mrs. Balderas could expect a reduction

in pay of approximately \$5,176.00 for the 2016-17 school year, should she continue in the position of Specialist DAEP Program. *See* Dkt. 55 Ex. B-2. Additionally, Leonardo Balderas was notified that his pay rate would be adjusted effective immediately based on his reassignment. Dkt. 56 Ex. B-2. Due to his prior experience, Leonardo Balderas received the maximum pay rate for his position. Dkt. 56 Ex. B-2. Based on this reassignment and the maximum pay rate for the position of Security Guard, Mr. Balderas's hourly rate was reduced from \$18.25 per hour to \$15.06 per hour. Dkt. 56 Ex. B-2.

6. On July 29, 2015, both Theresa and Leonardo Balderas filed formal grievances complaining about their reassignments. Dkt. 55 Ex B-3 and Dkt. 56 Ex B-3. In Theresa's written complaint, she asserted her reassignment was a breach of contract, a violation of her due process rights, and retaliation for filing an alleged whistleblower complaint. Dkt. 55 Ex. B-3. In Leonardo's written complaint, he asserted his reassignment was based on political retaliation and retaliation for filing an alleged whistleblower complaint. Dkt. 56 Ex. B-3. In his written grievance, Leonardo Balderas complains only about the decision to reassign him made by Dr. Joe Gonzales, and not of any action taken by the Individual Defendants. *See* Dkt. 56 Ex. B-2 & Dkt. 56 Ex. B-3.

7. On August 21, 2015, a grievance conference was held with the Human Resources Director, Shauna Offield, regarding Theresa and Leonardo Balderas' complaints. *See* Dkt. 55 Ex. B-4 & Dkt. 56 Ex. B-4. On September 4, 2015, Mrs. Shauna Offield issued grievance responses, denying both Theresa and Leonardo Balderas' grievances. *See* Dkt. 55 Ex. B-4 & Dkt. 56 Ex. B-4. Mrs. Offield's grievance response concerning Theresa Balderas did not address any alleged political retaliation, because that was not the subject of her grievance. Dkt. 55 Ex. B-4 & Dkt. 55 Ex. B-7. As for Mrs. Offield's response as to alleged political retaliation against Leonardo Balderas, Mrs.

Offield stated, “there is no evidence that Dr. Gonzales’s actions were premised upon any political affiliation or expression by Mr. Balderas...Dr. Gonzales determined that the District no longer needed the position of “Courier” and that Mr. Balderas would serve solely as a security guard. In addition, Mr. Balderas is being paid the maximum possible pay rate of a security guard.” Dkt. 56 Ex. B-4.

8. On September 18, 2015, Theresa and Leonardo Balderas both filed an appeal of the September 4, 2015 decisions issued by Mrs. Offield. *See* Dkt. 55 Ex. B-5 & Dkt. 56 Ex. B-5. In her September 18, 2015 grievance written appeal, Theresa Balderas made no allegation that her reassignment was in retaliation for her political association. *See* Dkt. 55 Ex. B-5. In his September 18, 2015 grievance appeal, Leonardo Balderas stated that he disagreed with Mrs. Offield’s decision regarding the alleged political retaliation by Dr. Gonzales, but did not allege that any action was taken by the Board or by the Individual Defendants. *See* Dkt. 56 Ex. B-5.

9. On September 24, 2015, the District received a sexual harassment complaint from employee Amber Bratton against Joshua Balderas. Dkt. 54 Ex. B-6 On September 25, 2015, the District received a letter from a witness to the incident between Ms. Bratton and Joshua Balderas. Dkt. 54 Ex. B-7. Later that day, Joshua Balderas was placed on administrative leave with pay pending the outcome of the sexual harassment investigation. Dkt. 54 Ex. B-8; Dkt. 54 Ex. A-1 20:17-21:10; *see also* Dkt. 54 Exs. B-9 through B-11. On September 28, 2015, the Principal of Gallardo Elementary, the school where Joshua Balderas was assigned, wrote a letter recommending Joshua Balderas’s termination. Dkt. 54 Ex. B-9. (“Based on my review of all information available, statement of employees and including prior disciplinary information in his personnel file, his unprofessional comments towards AB, I am recommending to Human

Resources that as Officer Balderas immediate supervisor he is no longer capable of performing his professional job duties as a Peace Officer, due to his actions of inappropriate verbal language and physical proximity to said employee. I am recommending that he be released of his position as an employee of Southside ISD.”).

10. On November 12, 2015, based on the above referenced incident, Joshua Balderas was terminated. Dkt. 54 Ex B-12.

11. Theresa and Leonardo Balderas’s grievance appeal was heard by the Board of Trustees on December 3, 2015. Dkt. 55 Ex. B-6 & Dkt. 56 Ex. B-6. The Board took no action at the December 3, 2015 meeting on either grievance. Dkt. 55 Ex. B-6 & Dkt. 56 Ex. B-6.

12. Pursuant to Southside ISD Board Policy DGBA(LOCAL), “[i]f the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.” Dkt. 55 Ex. B-7 & Dkt. 56 Ex. B-7. The Board did not take action on either grievance at its next regularly scheduled meeting. *See* Dkt. 55 Ex. B-8 & Dkt. 56 Ex. B-8. As such, the Board upheld Mrs. Offield’s decisions by operation of policy. *See* Dkt. 55 Ex. B-7 and Ex. B-8.

13. On May 11, 2016 Leonardo Balderas was terminated by Superintendent Mark Eads for, “[v]iolation of Board Policy DH(EXHIBIT), GKB(LOCAL), GKDA(LEGAL), and GKDA(LOCAL),” as well as, “[f]ailure to be truthful when questioned about the distribution of printed documents at various District facilities.” Dkt. 56 Ex. B-9. Specifically, when asked by the District’s Human Resources Director if he had distributed flyers anywhere in the District, Leonardo stated that he did not. *See* Dkt. 56 Ex. A-1 41:13-45:22 & Dkt. 56 Ex. B-10. At that time, the Human Resources Director played Leonardo Balderas a video of him pulling the subject flyers

out of his shirt and placing them in a District cafeteria. Dkt. 56 Ex. B-11. After being shown the video, Leonardo Balderas admitted to picking up the flyers and placing them in other locations around the District. Dkt. 56 Ex. A-1 41:19-45:22 & Dkt. 56 Ex. B-10. The decision to terminate Leonardo Balderas was made by Superintendent Mark Eads. Dkt. 56 Ex. B-9.

14. Theresa Balderas continued working for the District in the position of Specialist DAEP Program until the 2017-18 school year, when she was offered and agreed to accept a teaching position at Losoya Middle School, within the District. *See* Dkt. 55 Ex. A-1 32:19-33-6; Dkt. 55 Ex. B-9. Mrs. Balderas retired from Southside Independent School District in June of 2018. Dkt. 55 Ex. A-1 39:18-40:24.

15. On or about November 15, 2016, the Texas Education Agency (“TEA”) issued a report finding the District had experienced a systemic breakdown in its ability to govern and oversee the management of the District. The Report further found that: “Members of the SISD Board of Trustees acted individually on behalf of the board in violation of the Tex. Code 11.051(a-1).” As a result, the Texas Commissioner of Education ordered that the Board of Trustees be dissolved because of the Board’s micro-management of the District and violations of the Texas Education code laws regarding board members roles and functions. The Report was based, in part, on the misconduct of “Trustee G,” who is former trustee and Plaintiff witness Loren Brewer. TEA appointed a Board of Managers to oversee the District.

16. Former Superintendent Richard Vela did not hold superintendent certification during the time immediately before or during his tenure as District superintendent. The District applied for and was granted a waiver of the Superintendent Certification requirement for the 2014-2015 school year and conditional approval for the 2015-2016 school year. The Board required Mr. Vela to

obtain his full superintendent certification, which he failed to do. Because Mr. Vela did not obtain his required certification, he was terminated from his position. The District entered into a settlement agreement with him.

17. Dr. Joe Gonzales was hired as interim superintendent for the 2015-16 school year to replace Mr. Vela.

Respectfully submitted,

By: /s/ D. Craig Wood
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2019, a true and correct copy of the foregoing Joint Stipulated Facts was electronically filed with the Clerk of the Court using the CM/ECF system and notification of such filing will be electronically sent to:

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